

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Leo H. Justice,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 5, 2022

Court of Appeals Case No.
22A-CR-1051

Appeal from the
Ripley Superior Court

The Honorable
Jeffrey L. Sharp, Judge

Trial Court Cause No.
69D01-2107-F6-135

Foley, Judge.

[1] Leo H. Justice (“Justice”) pleaded guilty to Level 6 felony failure to register as a sex or violent offender¹ and admitted to being a habitual offender.² The trial court sentenced Justice to an aggregate sentence of seven and one half years executed. Justice appeals the trial court’s sentence and claims that his sentence is inappropriate in light of the nature of the offense and his character.³ We affirm.

Facts and Procedural History

[2] On April 14, 2005, Justice was convicted of sexual misconduct involving a minor which required him to register as a sex offender with the local Sheriff’s Office. On March 15, 2021, Justice signed and acknowledged a Sex or Violent Offender Registration Form (“Registration Form”) that required him to register his principal residence address within seven days of his release from custody. On April 18, 2021, Justice was incarcerated in Dearborn County Jail on an unrelated matter. On June 3, 2021, Justice was released and began residing in Ripley County. On July 19, 2021, the Dearborn County Probation Office informed the Ripley County Sheriff’s Office that Justice was released on June 3,

¹ Ind. Code § 11-8-8-17(a)(1).

² I.C. § 35-50-2-8(i)(2).

³ In his brief, Justice raises his issue under the abuse of discretion standard, but his argument only contains assertions under Indiana Appellate Rule 7(B). Accordingly, we will only review the trial court’s decision under Appellate Rule 7(B).

2021. Justice had not notified the Ripley County Sheriff's Office of his release from jail nor registered his address.

- [3] On August 24, 2021, the State charged Justice with Count I, failure to register as a sex or violent offender, as a Level 6 felony. The State also sought habitual offender status. On February 14, 2022, Justice entered an open plea which left all terms of sentencing to the discretion of the trial court. Justice pleaded guilty to Level 6 felony failure to register as a sex or violent offender and admitted to being a habitual offender. On March 23, 2022, Justice was sentenced and hereafter appeals.

Discussion and Decision

- [4] Justice contends that his sentence is inappropriate in light of the nature of his offense and his character. The Indiana Constitution authorizes independent appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this court to revise a sentence when it is "inappropriate in light of the nature of the offense and the character of the offender." Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to

our collective sense of what is appropriate.’” *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[5] Justice first claims that the nature of his offense did not warrant his sentence. When considering the nature of the offense, we first look to the advisory sentence. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh’g* 875 N.E.2d 218 (Ind. 2007). Indiana Code Section 35-50-2-7(b) provides that “a person who commits a Level 6 felony . . . shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year.” For a habitual offender convicted of a Level 6 felony, the court shall impose an additional fixed term between “two (2) years and six (6) years.” I.C. § 35-50-2-8(i)(2). Here, Justice was sentenced to two and one-half years for the Level 6 felony failure to register as a sex or violent offender. The trial court imposed a five year habitual offender enhancement. Accordingly, Justice’s aggregate sentence of seven and one-half years is one year below the maximum possible sentence for his offense.

[6] Justice argues that his offense was not born out of malice or ill will, but out of “pure negligence” because “he mistakenly believed that he was not required to register until his yearly update meeting.” Appellant’s Br. p. 13. However, the Registration Form that Justice signed a few months prior to his release, and acknowledged during his trial, explicitly stated that he was required to register his principal residence address “within 7 days of [his] release from custody.” Ex. Vol. 3 p. 125. After his release from jail, almost two months passed

without Justice registering his address which led to the State issuing a warrant for his arrest. Justice's claim of negligence belies the facts and record in this matter. This is Justice's fifth conviction for failing to register as a sex offender. The record reflects Justice's conscious choice to avoid the registration requirements required of him rather than a misunderstanding of his obligations. The sentence is not inappropriate in light of the nature of his offense.

- [7] Justice also maintains that his character makes the sentence inappropriate. When considering the character of the offender, one relevant fact is the defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013). The significance of the criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id.* Here, in addition to the aforementioned convictions, Justice's criminal history consists of the following convictions beginning in 1983: (1) minor consuming; (2) three possessions of marijuana; (3) driving while suspended; (4) two forgeries; (5) assault; (6) driving while revoked; (7) operating motor vehicle with driver's license revoked; and (8) non-support of a dependent child. Ex. Vol. 3 p. 108–11. Furthermore, Justice has violated “every one” of the multiple times he was placed on probation or parole. The record shows that, while on probation or parole, Justice failed to report when ordered, failed to pay fees, failed to pay child support, and committed new offenses. Tr. Vol. II p. 86; Appellant's App. Vol. II p. 225. In fact, he committed the present offense while he was on probation and parole.

- [8] The trial court found, and we agree, that Justice’s “behavior demonstrates [his] contempt for the court’s authority and a disregard for authority in general.” Appellant’s App. Vol. II p. 225. Continuing to commit crimes after frequent contacts with the judicial system is a poor reflection of Justice’s character. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007); *see also Connor v. State*, 58 N.E.3d 215, 221 (Ind. Ct. App. 2016) (continued crimes indicate a failure to take full responsibility for one’s actions). Justice’s sentence is not inappropriate in light of his character.
- [9] Based on the foregoing, we conclude that Justice’s sentence is not inappropriate in light of the nature of the offense and his character.
- [10] Affirmed.

Robb, J., and Mathias, J., concur.